

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Kolo Lynn Davis)
Dist. 3, Map 101, Control Map 101, Parcel 12.01) Campbell County
Commercial Property)
Tax Year 2005)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$361,600	\$141,800	\$503,400	\$201,360

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 1, 2006 in Knoxville, Tennessee. In attendance at the hearing were Mr. and Mrs. Davis, the appellants, and Campbell County Property Assessor's representatives Clark Ford and Brandon Parten.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 1.7 acre parcel improved with a multi-tenant commercial building located at 1926 Jacksboro Pike in LaFollette, Tennessee.

The taxpayer contended that subject property should be valued at a maximum of \$340,000. In support of this position, the taxpayer introduced into evidence an appraisal report prepared by Leslie P. Sellers, MAI which valued subject property at \$340,000 as of November 1, 2004.

The assessor contended that subject property should remain valued at \$503,400. In support of this position, the property record card and two vacant lot sales were introduced into evidence. Mr. Clark maintained that Mr. Sellers' comparable sales lack probative value because they do not actually front the highway like subject lot and the assessor's sales.

I. Jurisdiction

The first issue before the administrative judge concerns jurisdiction. This issue arises from the fact that the disputed appraisal was not appealed to the Campbell County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of

assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Campbell County Board of Equalization.

Respectfully, trying to ascertain why Mr. Davis did not appeal to the Campbell County Board of Equalization is somewhat analogous to trying to hit a moving target. Mr. Davis indicated on his appeal form that he did not appeal to the local board because he erroneously thought his taxes would not increase based upon what he believed the assessor's office told him. At the hearing, however, Mr. Davis conceded that he might have "confused the dates." Mr. Davis also noted, among other things, that he had a stroke in 1999.

The administrative judge finds Mr. Davis failed to establish that his failure to appeal to the Campbell County Board of Equalization resulted from a circumstance beyond his control. The administrative judge finds that although Mr. Davis briefly mentioned his stroke in 1999, he did not claim that his mental or physical functioning was in any way impaired during the relevant timeframe. Indeed, the administrative judge found Mr. Davis to be extremely articulate during the valuation portion of the hearing.

II. Value

Based upon the foregoing, the administrative judge finds it technically unnecessary to address the question of value. Nonetheless, the administrative judge will issue an alternative ruling on the merits in order to expedite any further proceedings.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

The administrative judge finds that Mr. Sellers' appraisal report cannot receive any weight because he was not present to testify or undergo cross-examination. The administrative judge finds that Mr. Ford's criticisms of Mr. Sellers' comparables sales appeared reasonable.

The administrative judge finds that the Assessment Appeals Commission has refused to consider appraisal reports in similar situations. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$361,600	\$141,800	\$503,400	\$201,360

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."**

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of March, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Kolo Lynn Davis
Billy Hicks, Assessor of Property